



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 19.06.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.38 of 2025

& CMP.No.298 of 2025

Ramachandra Ubathiyayar

... Petitioner

Vs.

Ezhumalai

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 03.10.2024 passed in I.A.No.5 of 2024 in O.S.No.473 of 2020 on the file of the Principal Subordinate Judge, Tiruvannamalai.

For Petitioner : Mrs.S.Suseela Devi

For Respondent : Mr.R.Rajarajan

ORDER

The Civil Revision Petition has been filed to set aside the fair and decreetal order dated 03.10.2024 passed in I.A.No.5 of 2024 in O.S.No.473 of 2020 on the file of the Principal Subordinate Judge, Tiruvannamalai.

2.Heard the learned counsel for the parties.

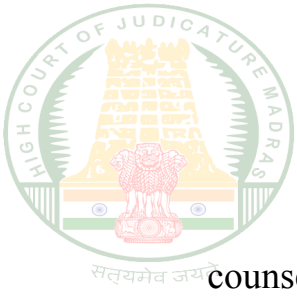


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3.The contesting 13th defendant is the revision petitioner, aggrieved by the order of dismissal of his application seeking appointment of an Advocate Commissioner to examine himself at his residence, considering his advanced age and ill-health.

4.The learned counsel for the petitioner would submit that the petitioner is aged 86 years and the Sub-Court is also situated in the first floor of the premises and it would be impossible for the petitioner to attend the Court physically and subject himself to chief and cross examination. The Medical Certificate has also been filed as a document along with the typed set of papers, however, she fairly submits that the said Medical Certificate was not produced before the Trial Court.

5.Per contra, the learned counsel for the respondent/plaintiff would submit that the building has a lift facility and there would be no difficulty for the petitioner/13th defendant to appear in person. He would further submit that the petitioner is only protracting the proceedings by filing such applications. He would therefore pray for dismissal of the revision.

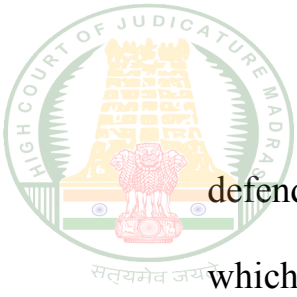


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6.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the order impugned in this revision.

7.It is not disputed that the petitioner is the only contesting defendant in the said suit and therefore, his evidence would be absolutely necessary for the Trial Court to adjudicate the issues between the parties. It is also an admitted fact that the 13th defendant is aged 86 years. Even in the plaint, the plaintiff has stated the age of the 13th defendant to be 77 in 2020. Therefore, the petitioner/13th defendant is at least 85 years old. Further, the learned counsel for the petitioner would state that for the last one month, the petitioner is bed ridden and he would not be in a position to go over physically to the Sub Court, even if the Court was in the ground floor or having lift facility to reach the first floor.

8.Considering the above and the interest of justice, the application for appointment of an Advocate Commissioner which has been negated by the Trial Court is set aside. The Trial Court shall appoint an Advocate of senior standing as the Advocate Commissioner to record the evidence of the 13th



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defendant at his residence. The Sub Court shall fix a particular date on which both chief and cross examination shall be concluded and the report of the Advocate Commissioner shall be filed before this Court along with the deposition, within a week thereafter. The learned counsel for the petitioner states that she does not have any further witness to be examined on the side of the defendants. Hence, after receipt of the report from the Advocate Commissioner, the Trial Court shall hear arguments in the suit and dispose of O.S.No.473 of 2020 on or before 31.10.2025.

9. With the above direction, the Civil Revision Petition is disposed of. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

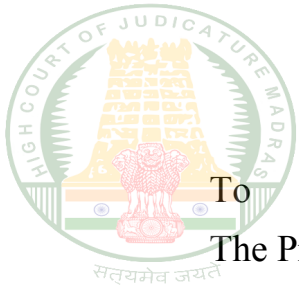
19.06.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No

Internet : Yes / No

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To
The Principal Subordinate Judge, Tiruvannamalai.

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P.B. BALAJI,J.



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